

2013 DRAFTING REQUEST

Bill

Received: 9/23/2013 Received By: gmalaise
Wanted: As time permits Same as LRB:
For: Tod Ohnstad (608) 266-0455 By/Representing: Joanna Beilman-Dulin
May Contact: Drafter: gmalaise
Subject: Employ Priv - miscellaneous Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Ohnstad@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Payment of an employee's wages by means of a payroll card

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	gmalaise 12/11/2013	kfollett 10/22/2013	jfrantze 10/22/2013	_____	lparisi 10/22/2013		State S&L
/1		kfollett 12/11/2013	jmurphy 12/11/2013	_____	srose 12/11/2013	srose 1/8/2014	State S&L

FE Sent For:

@
intro

<END>

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/P1	gmalaise 10/18/2013	kfollett 10/22/2013	jfrantze 10/22/2013	_____	lparisi 10/22/2013		State S&L

FE Sent For:

11/5/13
12/1/13

Jim 12/11
self

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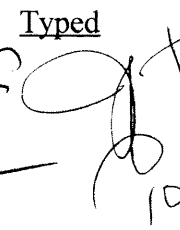
Topic:

✓ Payment of an employee's wages by means of a payroll card

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See attached

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/P1	gmalaise	1/Plk-f 10/22		128 22			

FE Sent For:

<END>

Malaise, Gordon

From: Rep. Ohnstad
Sent: Friday, September 20, 2013 3:57 PM
To: Malaise, Gordon
Subject: Rep. Ohnstad Drafting Request - Regulating Payroll Cards
Attachments: Payroll-Model-Law.pdf

Good afternoon Gordon,

Thank you for speaking with me just now. As I mentioned on the phone, Rep. Ohnstad would like to request a preliminary draft of legislation to regulate payroll cards in Wisconsin. Having looked into this issue, there are a number of specific protections that he would like included in the draft. They are as follows:

- Employees must be able to access their full wages at least once per pay period without cost.
- Employees should be provided an option to check account balances via an automated telephone system and at least one additional electronic options. These should be offered at no cost to the employee.
- Payroll cards should not be linked to abusive forms of credit, credit practices, and fee-based overdraft programs.
- Employees should not be assessed a fee for a replacement card unless they have already received one free replacement card during the calendar year.
- Terms and conditions and fee disclosures must be provided in the languages the employer normally uses to communicate employment-related policies to their employees.
- Pricing for discretionary services should be reasonable and easily understandable.
- Employees must not be signed up for a payroll card without their knowledge or consent.
- Employees must have a choice of wage payment method and be able to change it.
- Employees must be permitted to withdraw funds without a fee from an ATM in the network offered by the card issuer at least twice per pay period, unless the pay period is weekly in which case employees must be permitted to withdraw funds without a fee from an ATM in the network offered by the card issuer at least once per pay period.
- Employees should not be charged initiation, loading and participation fees; account maintenance fees; inactivity or dormancy fees; low balance and declined transaction fees; and fees to obtain a refund by check to close out the card.
- Employees should be able to enroll easily in a plan providing monthly paper statements, at no cost to the employee, by making a one-time request at any time.
- Employee should have a right to paper statements for no more than \$1/month.
- Employees should be provided at least two free telephone calls to a live customer service representative per pay period.
- The funds in the payroll card account must have deposit insurance.

I know this is a fairly long list of regulations, so please don't hesitate to call me to discuss any of the bullet point items in further detail. I would be happy to expand upon any of the bullet points.

Additionally, in case it proves helpful to you in drafting, I am attaching sample statutory language prepared by some national consumer advocacy groups. This language reflects many of the above protections, but Rep. Ohnstad has made a few tweaks from the model law in his request.

Thank you in advance for your assistance in getting this preliminary draft drafted. I really appreciate it.

Best,
Joanna

--
Joanna Beilman-Dulin
Office of Rep. Tod Ohnstad
65th Assembly District
(608) 266-0455 | Rep.Ohnstad@legis.wi.gov

Follow Rep. Tod Ohnstad on Facebook

**Consumers Union and National Consumer Law Center
on behalf of its low-income clients**

MODEL STATE PAYROLL CARD LAW

A. Payroll Card Account Law

(1) Definitions

- (a) "Employer" means the employer, and any person or entity acting directly or indirectly on behalf of the employer.
- (b) "Issuer" means the payroll card issuer, and any person acting directly or indirectly on behalf of the payroll card issuer.
- (c) "Payroll card" means an access mechanism, including a prepaid card, code, or device, issued to an employee by an employer, or other entity by arrangement with the employer, through which an employer provides an employee access to his or her wages.
- (d) "Wages" for purposes of this Act includes wages, salary, or other unrestricted monetary compensation.
- (e) "Payroll card account" means an account which holds funds drawn upon by a payroll card.

(2) [Voluntary written consent required] An employer shall not deliver payment of wages by payroll card unless:

- (a) the employer obtains the employee's written consent to receive wages by payroll card. This consent must be obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll card or payroll card account;
- (b) the employer does not make participation in the payroll card program a condition of hire or of continued employment; and
- (c) the employer also offers the employee the options of:
 - (i) direct deposit to a depository account of the employee's choosing, and
 - (ii) a paper check.

(3) [Availability of wages without a fee] An employer shall not deliver payment of wages by payroll card unless the contract the employer enters into with the issuer for the provision of the card to its employees requires that the issuer provide employees both:

- (a) at least two ATM withdrawals per pay period at no cost to the employee, available on and after each pay deposit. These ATM withdrawals may be limited to ATMs in a designated network if that network provides reasonably

- convenient proximity and access in relation to the employee's place of employment or place of residence; and
- (b) at least one method to withdraw the entire pay for each pay period without the employee incurring a fee.

(4) [Certain types of other fees prohibited] In addition to the fees prohibited under Section (3), an employer may not use a payroll card program to issue wages if the employee may be charged fees by the card issuer, any card sponsor, or the employer for any of the following:

- (a) Application, initiation, loading, participation or other fee to receive wages or to hold the card;
- (b) Point of sale transactions and other ordinary transactions;
- (c) Overdraft, shortage, or low balance status;
- (d) Declined transactions;
- (e) Account inactivity;
- (f) The first three telephone calls to a live customer service representative per pay period;
- (g) Accessing balance or other account information online, by Interactive Voice Response (IVR), through any other automated system offered in conjunction with the card, or at any ATM in the network of the payroll card issuer;
- (h) Written statements or transaction histories;
- (i) Closing an account or issuing payment of the remaining balance by check or other means; or
- (j). Any fee not explicitly identified by type and by amount in the contract between the employer and the payroll card issuer

(5) [No expiration of payroll card funds] The funds on a payroll card shall not expire. The account may be closed for inactivity, with reasonable notice to the cardholder, provided that the remaining funds are refunded to the employee at no cost to the employee.

(6) [Periodic statements and transaction histories] An employer may use a payroll card program to issue wages only if the contract the employer enters into with the issuer for the provision of the card to its employees requires that the issuer provide each of the following with respect to transaction histories and balance information, without a cost to the employee:

- (a) upon the employee's one-time written or oral request, a periodic statement not less frequently than monthly; or if there is a balance but no activity with respect to the card, not less frequently than every three months. The employee may choose to receive this information electronically or on paper.

The transaction history shall include all transactions, including deposits, withdrawals, fees charged or other transactions by any entity from or to the employee's payroll card account;

- (b) upon the employee's written or oral request, a transaction history covering at least the 12 months preceding the request;
- (c) upon the employee's written or oral request, electronic balance notifications on a per-day or per-transaction basis; and
- (d) an annual mailed notice of the right to obtain on request a transaction history, annual statement, or periodic statements. This notice need not be sent to any employee who has signed up for periodic paper or electronic statements or who has accessed his or her electronic transaction history in the previous 12 months.

(7) [Employer disclosures to the employee] An employer who offers a payroll card shall provide the employee with the following information prior to seeking consent to accept wages by payroll card. This information shall be provided in the languages the employer normally uses to communicate employment-related information to the employee:

- (a) a plain language description of the employee's options for receiving wages; and
- (b) the terms and conditions of the payroll card, including a clear, conspicuous and complete itemized list, in a separate form that the employee may keep, of any and all fees that may be deducted from the employee's payroll card account by the payroll card issuer. The dollar amount of each such fee must be stated.
- (c) The information provided to the employee under (a) and (b) must also be made available in a clear and conspicuous manner on the employer's human resources website or on a website maintained by the payroll card issuer with a clear link from the employer's human resources website.

(8) [No link to credit] Payroll card accounts shall not be linked to any form of credit, including a loan against future pay or a cash advance on future pay. This provision does not prohibit a payroll card issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

(9) [Change of wage payment method] The employer must honor an employee request to change the method of receiving wages from a payroll card to another method that is allowed by law.

(10) [Insure payroll card account funds] An employer may offer a payroll card program only if that program is designed to maintain funds placed in a payroll card program in an FDIC- or NCUA-insured account on a pass-through basis to the individual cardholder.

(11) [Unfair, deceptive or abusive practices] An employer and a payroll card issuer each shall not engage in any unfair, deceptive or abusive practices in connection with offering or providing a payroll card program.

(12) [Severability] The provisions of this act are severable. If any phase, clause, sentence, provision or section is declared to be invalid or preempted in whole or in part by any federal law or regulation, the validity of the remainder of this Act shall not be affected.

Prepared by:
Consumers Union
Financial Services Campaign Team
1535 Mission Street
San Francisco, CA 94103
(415) 431-6747
www.DefendYourDollars.org
Posted Sept. 2010
Updated Feb. 2011



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3226/P1

GMM...

JF

In 10/18
Wanted Tues 10/22

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PLB

Gen

- 1 AN ACT ...; **relating to:** payment of wages by electronic fund transfer to a payroll
2 card account.

Analysis by the Legislative Reference Bureau

Current law

Under current law, if an employer pays wages in a form other than cash, the wages must be payable at the employer's office, if within the state, at any bank within the state, or at a place of business within the county in which the work was performed.

The bill

Payment of wages by payroll card. This bill regulates the payment of wages in the form of an electronic fund transfer to a payroll card account, which under current regulations issued under the federal Electronic Fund Transfer Act, is defined as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person (payment of wages by payroll card).

Employee consent required. Specifically, the bill prohibits an employer from paying an employee his or her wages by payroll card unless all of the following apply:

1. The employer obtains the employee's consent to receive his or her wages by payroll card. That consent must be given knowingly and voluntarily and not as a condition of employment, must be given before the performance of the work for which the employee is receiving wages, and must be affirmed by a written or otherwise verifiable record maintained by the employer.

2. The employer also offers the employee the option of receiving his or her wages in cash, in the form of a check, or by means of direct deposit to a depository account of the employee's choosing.

Disclosure requirements. Before an employer may seek the consent of an employee to receive his or her wages by payroll card, the employer must provide all of the following information to the employee:

1. A plain-language description of the employee's options for receiving his or her wages.

2. A statement of the terms and conditions governing the employer's payment of wages by payroll card and the employee's use of a payroll card to access those wages. That statement must include a clear, conspicuous, and easily understandable list of all fees that may be charged to the employee and the amount of those fees.

Fees. Under the bill, an employer may not pay an employee his or her wages by payroll card unless the employer, if the employer itself issues payroll cards to its employees, or a third-party processor, depository institution, or other person contracted by the employer to issue those cards (payroll card issuer) does all of the following:

1. Permits the employee to make at least two withdrawals per pay period at no cost to the employee from an automated teller machine in a network designated by the payroll card issuer, unless the employee's pay period is weekly, in which case the payroll card issuer may permit the employee to make only one such withdrawal per pay period at no cost to the employee.

2. Provides at least one method by which the employee may withdraw his or her entire wages for each pay period at no cost to the employee.

The bill permits a payroll card issuer to charge a reasonable fee for any discretionary or optional service that the issuer provides to an employee, except that a payroll card issuer may not charge an employee a fee for any of the following: 1) establishing or maintaining a payroll card account or obtaining or holding a payroll card; 2) a point-of-sale transaction or any other ordinary transaction; 3) a low balance in the employee's payroll card account; 4) a declined transaction; 5) inactivity or dormancy in the employee's payroll card account; 6) one replacement payroll card issued in each calendar year; or 7) closing a payroll card account or issuing payment of the remaining balance in a payroll card account by check or any other means.

Provision of account information. The bill requires a payroll card issuer to provide all of the following at no cost to an employee:

1. On the employee's one-time written or oral request, a monthly statement specifying all deposits to, withdrawals from, fees charged to, and other transactions involving the employee's payroll card account since the date of the last monthly statement.

2. Two telephone calls from the employee to a live customer service representative of the payroll card issuer during each pay period.

3. Access to balance or other account information by way of an automated telephone system and not less than one additional automated option.

No link to credit. The bill prohibits an employer or other payroll card issuer from linking a payroll card account to any form of credit, including a loan against future pay, a cash advance on future pay, or any fee-based overdraft protection program, except that the bill does not prohibit a payroll card issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

Change in method of wage payment. The bill permits an employee who is receiving his or her wages by payroll card to request his or her employer to change the method by which the employee receives those wages at any time and requires the employer to honor such a request.

Insured accounts required. Finally, the bill permits an employer to pay an employee his or her wages by payroll card only if the employee's payroll card account is insured by the Federal Deposit Insurance Corporation or the National Credit Union ~~Association~~ *Administration*.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.453 of the statutes is created to read:

2 **103.453 Payroll cards.** (1) DEFINITIONS. In this section:

3 (a) "Automated teller machine" has the meaning given in s. 134.85 (1) (a).

4 (b) "Payroll card" means a prepaid card or any other code or device through
5 which an employer provides an employee with access to his or her wages.

6 (c) "Payroll card account" has the meaning given in 12 CFR 205.2 (b) 2.

7 (d) "Payroll card issuer" means an employer that operates and manages the
8 payroll card accounts of its employees and that issues payroll cards to those
9 employees or a third-party *e payroll* ~~party~~ processor, depository institution, or any other
10 person contracted by an employer to operate and manage those accounts and to issue
11 those cards.

12 (e) "Wages" has the meaning given in s. 109.01 (3).

1 **(2) CONSENT REQUIRED.** An employer may not pay an employee his or her wages
2 in the form of an electronic fund transfer to a payroll card account unless all of the
3 following apply:

4 (a) The employer, after providing the information specified in sub. (3) to the
5 employee, obtains the employee's consent to receive his or her wages in the form of
6 an electronic fund transfer to a payroll card account. That consent must be given
7 knowingly and voluntarily and not as a condition of employment, must be given
8 before the performance of the work for which the employee is receiving wages, and
9 must be affirmed by a written or otherwise verifiable record maintained by the
10 employer in accordance with s. 104.09.

11 (b) The employer also offers the employee the option of receiving his or her
12 wages in cash, in the form of a time check or other paper under s. 103.45, or by means
13 of direct deposit to a depository account of the employee's choosing.

14 **(3) DISCLOSURE.** (a) Before an employer may seek the consent of an employee
15 to receive his or her wages in the form of an electronic fund transfer to a payroll card
16 account, the employer shall provide all of the following information to the employee:

17 1. A plain-language description of the employee's options under sub. (2) (a) and
18 (b) for receiving wages.

19 2. A statement of the terms and conditions governing the employer's payment
20 of wages in the form of an electronic fund transfer to a payroll card account and the
21 employee's use of a payroll card to access those wages. That statement shall include
22 a clear, conspicuous, and easily understandable list of all fees that may be charged
23 to the employee by the payroll card issuer and the amount of those fees.

✓

1 (b) The employer shall provide the information specified in par. (a) in the
2 language that the employer normally uses to communicate employment-related
3 information to the employee.

4 (4) FEES. (a) An employer may not pay an employee his or her wages in the
5 form of an electronic fund transfer to a payroll card account unless the payroll card
6 issuer does all of the following:

7 1. Permits the employee to make at least 2 ✓ withdrawals per pay period at no
8 cost to the employee from an automated teller machine in a network designated by
9 the payroll card issuer, unless the employee's pay period is weekly, in which case the
10 payroll card issuer may permit the employee to make only one such withdrawal per
11 pay period at no cost to the employee.

12 2. Provides at least one ✓ method by which the employee may withdraw his or
13 her entire wages for each pay period at no cost to the employee.

14 (b) Except as provided in par. (c), a payroll card issuer may charge a reasonable ✓
15 fee for any discretionary or optional service that the issuer provides to an employee.

16 (c) A payroll card issuer may not charge an employee a fee for any of the ✓
17 following:

18 1. Establishing ✓ or maintaining a payroll card account or obtaining or holding
19 a payroll card. Fees prohibited under this subdivision include application fees,
20 initiation fees, loading fees, participation fees, and maintenance fees.

21 2. A point-of-sale ✓ transaction or any other ordinary transaction.

22 3. A low balance ✓ in the employee's payroll card account.

23 4. A declined ✓ transaction.

24 5. Inactivity or dormancy ✓ in the employee's payroll card account.

25 6. One replacement ✓ payroll card issued in each calendar year.

1 7. Closing a payroll card account or issuing payment of the remaining balance
2 in a payroll card account by check or any other means.

3 (5) ACCOUNT INFORMATION. A payroll card issuer shall provide all of the
4 following at no cost to an employee:

5 (a) On the employee's one-time written or oral request, a monthly statement
6 specifying all deposits to, withdrawals from, fees charged to, and other transactions
7 involving the employee's payroll card account since the date of the last monthly
8 statement. The employee may choose to receive those monthly statements
9 electronically or on paper.

10 (b) Two telephone calls from the employee to a live customer service
11 representative of the payroll card issuer during each pay period.

12 (c) Access to balance or other account information by way of an automated
13 telephone system and not less than one additional automated option, which options
14 may include the Internet, any automated teller machine in the network of the payroll
15 card issuer, or any other automated system offered in conjunction with the payroll
16 card.

17 (6) NO LINK TO CREDIT. No employer or other payroll card issuer may link a
18 payroll card account to any form of credit, including a loan against future pay, a cash
19 advance on future pay, or any fee-based overdraft protection program. This
20 subsection does not prohibit a payroll card issuer from covering an occasional
21 inadvertent overdraft transaction if there is no charge to the employee.

22 (7) CHANGE IN METHOD OF WAGE PAYMENT. An employee who is receiving his or
23 her wages in the form of an electronic fund transfer to a payroll card account may
24 request the employer to change the method by which the employee receives those
25 wages at any time and the employer shall honor that request.

1 (8) INSURED ACCOUNTS. An employer may pay an employee his or her wages in
2 the form of an electronic fund transfer to a payroll card account only if that account
3 is insured by the federal deposit insurance corporation or the national credit union
4 association. administration

5 (9) ACTIONS PROHIBITED. (a) No employer, other payroll card issuer, or other
6 person may interfere with, restrain, or deny any right of an employee under this
7 section.

8 (b) No employer may discharge or otherwise discriminate against an employee
9 for exercising a right specified in par. (a), opposing a practice prohibited under par.
10 (a), filing a complaint or attempting to enforce any right under par. (a), or testifying
11 or assisting in any action or proceeding to enforce any right under par. (a).

12 (10) ENFORCEMENT. (a) An employee whose rights under this section are
13 interfered with, restrained, or denied in violation of sub. (9) (a) or who is discharged
14 or otherwise discriminated against in violation of sub. (9) (b) may file a complaint
15 with the department, and the department shall process the complaint in the same
16 manner as employment discrimination complaints are processed under s. 111.39. If
17 the department finds that a violation of sub. (9) (a) or (b) has been committed, the
18 department may order the employer to take such action authorized under s. 111.39
19 as will remedy the violation. Section 111.322 (2m) applies to a discharge or other
20 discriminatory act arising in connection with any proceeding under this paragraph.

21 (b) An employee who is owed wages or a refund of any fee not authorized under
22 sub. (4) may file a wage claim with the department under s. 109.09 (1) or may bring
23 an action under s. 109.03 (5) without first filing a wage claim with the department.

1 (11) PENALTY. Any employer, payroll card issuer, or other person who fails to
2 comply with this section is subject to a forfeiture of not less than \$10 nor more than
3 \$100.

4 SECTION 2. 106.54 (10) of the statutes is created to read:

5 106.54 (10) The division shall receive complaints under s. 103.453 (10) (a) and
6 shall process the complaints in the same manner as employment discrimination
7 complaints are processed under s. 111.39.

8 SECTION 3. 109.09 (1) of the statutes is amended to read:

9 109.09 (1) The department shall investigate and attempt equitably to adjust
10 controversies between employers and employees as to alleged wage claims. The
11 department may receive and investigate any wage claim which is filed with the
12 department, or received by the department under s. 109.10 (4), no later than 2 years
13 after the date the wages are due. The department may, after receiving a wage claim,
14 investigate any wages due from the employer against whom the claim is filed to any
15 employee during the period commencing 2 years before the date the claim is filed.
16 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.453, 103.49,
17 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
18 employer on behalf of the employee to collect any wage claim or wage deficiency and
19 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
20 under s. 109.10, the department may refer such an action to the district attorney of
21 the county in which the violation occurs for prosecution and collection and the
22 district attorney shall commence an action in the circuit court having appropriate
23 jurisdiction. Any number of wage claims or wage deficiencies against the same
24 employer may be joined in a single proceeding, but the court may order separate
25 trials or hearings. In actions that are referred to a district attorney under this

subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office of the district attorney who prosecuted the action.

SECTION 4. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.453, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 5. 111.322 (2m) (b) of the statutes is amended to read:

111.322 (2m) (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.453, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 6. Initial applicability.

(1) PAYROLL CARDS; COLLECTIVE BARGAINING AGREEMENTS. This act first applies to wages paid on the effective date of this subsection, except that this act first applies to wages paid to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed.

SECTION 7. Effective date.

(1) PAYROLL CARDS. This act takes effect on the first day of the 4th month beginning after publication.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE

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LRB-3226/P1
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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

- 1 AN ACT *to amend* 109.09 (1), 111.322 (2m) (a) and 111.322 (2m) (b); and *to create*
2 103.453 and 106.54 (10) of the statutes; **relating to:** payment of wages by
3 electronic fund transfer to a payroll card account.

Analysis by the Legislative Reference Bureau

Current law

Under current law, if an employer pays wages in a form other than cash, the wages must be payable at the employer's office, if within the state, at any bank within the state, or at a place of business within the county in which the work was performed.

The bill

Payment of wages by payroll card. This bill regulates the payment of wages in the form of an electronic fund transfer to a payroll card account, which under current regulations issued under the federal Electronic Fund Transfer Act, is defined as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person (payment of wages by payroll card).

Employee consent required. Specifically, the bill prohibits an employer from paying an employee his or her wages by payroll card unless all of the following apply:

1. The employer obtains the employee's consent to receive his or her wages by payroll card. That consent must be given knowingly and voluntarily and not as a

condition of employment, must be given before the performance of the work for which the employee is receiving wages, and must be affirmed by a written or otherwise verifiable record maintained by the employer.

2. The employer also offers the employee the option of receiving his or her wages in cash, in the form of a check, or by means of direct deposit to a depository account of the employee's choosing.

Disclosure requirements. Before an employer may seek the consent of an employee to receive his or her wages by payroll card, the employer must provide all of the following information to the employee:

1. A plain-language description of the employee's options for receiving his or her wages.

2. A statement of the terms and conditions governing the employer's payment of wages by payroll card and the employee's use of a payroll card to access those wages. That statement must include a clear, conspicuous, and easily understandable list of all fees that may be charged to the employee and the amount of those fees.

Fees. Under the bill, an employer may not pay an employee his or her wages by payroll card unless the employer, if the employer itself issues payroll cards to its employees, or a third-party processor, depository institution, or other person contracted by the employer to issue those cards (payroll card issuer) does all of the following:

1. Permits the employee to make at least two withdrawals per pay period at no cost to the employee from an automated teller machine in a network designated by the payroll card issuer, unless the employee's pay period is weekly, in which case the payroll card issuer may permit the employee to make only one such withdrawal per pay period at no cost to the employee.

2. Provides at least one method by which the employee may withdraw his or her entire wages for each pay period at no cost to the employee.

The bill permits a payroll card issuer to charge a reasonable fee for any discretionary or optional service that the issuer provides to an employee, except that a payroll card issuer may not charge an employee a fee for any of the following: 1) establishing or maintaining a payroll card account or obtaining or holding a payroll card; 2) a point-of-sale transaction or any other ordinary transaction; 3) a low balance in the employee's payroll card account; 4) a declined transaction.; 5) inactivity or dormancy in the employee's payroll card account; 6) one replacement payroll card issued in each calendar year; or 7) closing a payroll card account or issuing payment of the remaining balance in a payroll card account by check or any other means.

Provision of account information. The bill requires a payroll card issuer to provide all of the following at no cost to an employee:

1. On the employee's one-time written or oral request, a monthly statement specifying all deposits to, withdrawals from, fees charged to, and other transactions involving the employee's payroll card account since the date of the last monthly statement.

2. Two telephone calls from the employee to a live customer service representative of the payroll card issuer during each pay period.

3. Access to balance or other account information by way of an automated telephone system and not less than one additional automated option.

No link to credit. The bill prohibits an employer or other payroll card issuer from linking a payroll card account to any form of credit, including a loan against future pay, a cash advance on future pay, or any fee-based overdraft protection program, except that the bill does not prohibit a payroll card issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

Change in method of wage payment. The bill permits an employee who is receiving his or her wages by payroll card to request his or her employer to change the method by which the employee receives those wages at any time and requires the employer to honor such a request.

Insured accounts required. Finally, the bill permits an employer to pay an employee his or her wages by payroll card only if the employee's payroll card account is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓

1 **SECTION 1.** 103.453 of the statutes is created to read:

2 **103.453 Payroll cards.** (1) **DEFINITIONS.** In this section:

3 (a) "Automated teller machine" has the meaning given in s. 134.85 (1) (a).

4 (b) "Payroll card" means a prepaid card or any other code or device through
5 which an employer provides an employee with access to his or her wages.

6 (c) "Payroll card account" has the meaning given in 12 CFR 205.2 (b) 2.

7 (d) "Payroll card issuer" means an employer that operates and manages the
8 payroll card accounts of its employees and that issues payroll cards to those
9 employees or a third-party payroll processor, depository institution, or any other
10 person contracted by an employer to operate and manage those accounts and to issue
11 those cards.

12 (e) "Wages" has the meaning given in s. 109.01 (3).

1 **(2) CONSENT REQUIRED.** An employer may not pay an employee his or her wages
2 in the form of an electronic fund transfer to a payroll card account unless all of the
3 following apply:

4 (a) The employer, after providing the information specified in sub. (3) to the
5 employee, obtains the employee's consent to receive his or her wages in the form of
6 an electronic fund transfer to a payroll card account. That consent must be given
7 knowingly and voluntarily and not as a condition of employment, must be given
8 before the performance of the work for which the employee is receiving wages, and
9 must be affirmed by a written or otherwise verifiable record maintained by the
10 employer in accordance with s. 104.09.

11 (b) The employer also offers the employee the option of receiving his or her
12 wages in cash, in the form of a time check or other paper under s. 103.45, or by means
13 of direct deposit to a depository account of the employee's choosing.

14 **(3) DISCLOSURE.** (a) Before an employer may seek the consent of an employee
15 to receive his or her wages in the form of an electronic fund transfer to a payroll card
16 account, the employer shall provide all of the following information to the employee:

17 1. A plain-language description of the employee's options under sub. (2) (a) and
18 (b) for receiving wages.

19 2. A statement of the terms and conditions governing the employer's payment
20 of wages in the form of an electronic fund transfer to a payroll card account and the
21 employee's use of a payroll card to access those wages. That statement shall include
22 a clear, conspicuous, and easily understandable list of all fees that may be charged
23 to the employee by the payroll card issuer and the amount of those fees.

1 (b) The employer shall provide the information specified in par. (a) in the
2 language that the employer normally uses to communicate employment-related
3 information to the employee.

4 (4) FEES. (a) An employer may not pay an employee his or her wages in the
5 form of an electronic fund transfer to a payroll card account unless the payroll card
6 issuer does all of the following:

7 1. Permits the employee to make at least 2 withdrawals per pay period at no
8 cost to the employee from an automated teller machine in a network designated by
9 the payroll card issuer, unless the employee's pay period is weekly, in which case the
10 payroll card issuer may permit the employee to make only one such withdrawal per
11 pay period at no cost to the employee.

12 2. Provides at least one method by which the employee may withdraw his or
13 her entire wages for each pay period at no cost to the employee.

14 (b) Except as provided in par. (c), a payroll card issuer may charge a reasonable
15 fee for any discretionary or optional service that the issuer provides to an employee.

16 (c) A payroll card issuer may not charge an employee a fee for any of the
17 following:

18 1. Establishing or maintaining a payroll card account or obtaining or holding
19 a payroll card. Fees prohibited under this subdivision include application fees,
20 initiation fees, loading fees, participation fees, and maintenance fees.

21 2. A point-of-sale transaction or any other ordinary transaction.

22 3. A low balance in the employee's payroll card account.

23 4. A declined transaction.

24 5. Inactivity or dormancy in the employee's payroll card account.

25 6. One replacement payroll card issued in each calendar year.

1 7. Closing a payroll card account or issuing payment of the remaining balance
2 in a payroll card account by check or any other means.

3 (5) ACCOUNT INFORMATION. A payroll card issuer shall provide all of the
4 following at no cost to an employee:

5 (a) On the employee's one-time written or oral request, a monthly statement
6 specifying all deposits to, withdrawals from, fees charged to, and other transactions
7 involving the employee's payroll card account since the date of the last monthly
8 statement. The employee may choose to receive those monthly statements
9 electronically or on paper.

10 (b) Two telephone calls from the employee to a live customer service
11 representative of the payroll card issuer during each pay period.

12 (c) Access to balance or other account information by way of an automated
13 telephone system and not less than one additional automated option, which options
14 may include the Internet, any automated teller machine in the network of the payroll
15 card issuer, or any other automated system offered in conjunction with the payroll
16 card.

17 (6) NO LINK TO CREDIT. No employer or other payroll card issuer may link a
18 payroll card account to any form of credit, including a loan against future pay, a cash
19 advance on future pay, or any fee-based overdraft protection program. This
20 subsection does not prohibit a payroll card issuer from covering an occasional
21 inadvertent overdraft transaction if there is no charge to the employee.

22 (7) CHANGE IN METHOD OF WAGE PAYMENT. An employee who is receiving his or
23 her wages in the form of an electronic fund transfer to a payroll card account may
24 request the employer to change the method by which the employee receives those
25 wages at any time and the employer shall honor that request.

1 **(8) INSURED ACCOUNTS.** An employer may pay an employee his or her wages in
2 the form of an electronic fund transfer to a payroll card account only if that account
3 is insured by the Federal Deposit Insurance Corporation or the National Credit
4 Union Administration.

5 **(9) ACTIONS PROHIBITED.** (a) No employer, other payroll card issuer, or other
6 person may interfere with, restrain, or deny any right of an employee under this
7 section.

8 (b) No employer may discharge or otherwise discriminate against an employee
9 for exercising a right specified in par. (a), opposing a practice prohibited under par.
10 (a), filing a complaint or attempting to enforce any right under par. (a), or testifying
11 or assisting in any action or proceeding to enforce any right under par. (a).

12 **(10) ENFORCEMENT.** (a) An employee whose rights under this section are
13 interfered with, restrained, or denied in violation of sub. (9) (a) or who is discharged
14 or otherwise discriminated against in violation of sub. (9) (b) may file a complaint
15 with the department, and the department shall process the complaint in the same
16 manner as employment discrimination complaints are processed under s. 111.39. If
17 the department finds that a violation of sub. (9) (a) or (b) has been committed, the
18 department may order the employer to take such action authorized under s. 111.39
19 as will remedy the violation. Section 111.322 (2m) applies to a discharge or other
20 discriminatory act arising in connection with any proceeding under this paragraph.

21 (b) An employee who is owed wages or a refund of any fee not authorized under
22 sub. (4) may file a wage claim with the department under s. 109.09 (1) or may bring
23 an action under s. 109.03 (5) without first filing a wage claim with the department.

1 (11) PENALTY. Any employer, payroll card issuer, or other person who fails to
2 comply with this section is subject to a forfeiture of not less than \$10 nor more than
3 \$100. ✓

4 **SECTION 2.** 106.54 (10) of the statutes is created to read:

5 106.54 (10) The division shall receive complaints under s. 103.453 (10) (a) and
6 shall process the complaints in the same manner as employment discrimination
7 complaints are processed under s. 111.39. ✓

8 **SECTION 3.** 109.09 (1) of the statutes is amended to read: ✓

9 109.09 (1) The department shall investigate and attempt equitably to adjust
10 controversies between employers and employees as to alleged wage claims. The
11 department may receive and investigate any wage claim which is filed with the
12 department, or received by the department under s. 109.10 (4), no later than 2 years
13 after the date the wages are due. The department may, after receiving a wage claim,
14 investigate any wages due from the employer against whom the claim is filed to any
15 employee during the period commencing 2 years before the date the claim is filed.
16 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.453, 103.49,
17 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
18 employer on behalf of the employee to collect any wage claim or wage deficiency and
19 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
20 under s. 109.10, the department may refer such an action to the district attorney of
21 the county in which the violation occurs for prosecution and collection and the
22 district attorney shall commence an action in the circuit court having appropriate
23 jurisdiction. Any number of wage claims or wage deficiencies against the same
24 employer may be joined in a single proceeding, but the court may order separate
25 trials or hearings. In actions that are referred to a district attorney under this

1 subsection, any taxable costs recovered by the district attorney shall be paid into the
2 general fund of the county in which the violation occurs and used by that county to
3 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
4 of the district attorney who prosecuted the action. ✓

5 **SECTION 4.** 111.322 (2m) (a) of the statutes is amended to read:

6 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
7 right under s. 103.02, 103.453, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455,
8 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599
9 or 103.64 to 103.82.

10 **SECTION 5.** 111.322 (2m) (b) of the statutes is amended to read: ✓

11 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
12 held under or to enforce any right under s. 103.02, 103.453, 103.10, 103.13, 103.28,
13 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997
14 or ss. 101.58 to 101.599 or 103.64 to 103.82.

15 **SECTION 6. Initial applicability.**

16 (1) PAYROLL CARDS; COLLECTIVE BARGAINING AGREEMENTS. This act first applies to
17 wages paid on the effective date of this subsection, except that this act first applies
18 to wages paid to an employee who is affected by a collective bargaining agreement
19 that contains provisions inconsistent with this act on the day on which the collective
20 bargaining agreement expires or is extended, modified, or renewed.

21 **SECTION 7. Effective date.**

22 (1) PAYROLL CARDS. This act takes effect on the first day of the 4th month
23 beginning after publication.

24 (END)

Rose, Stefanie

From: Beilman-Dulin, Joanna
Sent: Wednesday, January 08, 2014 12:32 PM
To: LRB.Legal
Subject: Draft Review: LRB -3226/1 Topic: Payment of an employee's wages by means of a payroll card

Please Jacket LRB -3226/1 for the ASSEMBLY.